IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.06.2007

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.A.No. 482 of 2007
and M.P.Nos.1 & 2 of 2007

M/s. Godrej Sara Lee Ltd.,
rep. By its General Manager-Legal
Mr. B.S. Virkar
R.S.No.131/1-4 Cuddalore Main road
Kattukuppam, Manapet Road
Pondicherry 607 402. ... Appellants/Petitioner

-vs-

1.The Commissioner of Central Excise
Goubert Avenue
Beach Road
Pondicherry 605 001.

2.The Joint Commissioner of Central Excise
Office of the Commissioner of Central Excise
Goubert Avenue, Beach Road
Pondicherry 605 001.

3.Deputy Commissioner of Central Excise
(Drawbacks) Office of the Commissioner of
Central Excise, Goubert Avenue
Beach Road, Pondicherry 605 001.

4.Assistant Commissioner of Customs
(Drawback) Custom House
60 Rajaji Salai
Chennai 600 001. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order of the learned single Judge dated made in W.P.No.3735 of 2007 dated 12.02.2007 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari call for the records pertaining to the impugned order No.C.No.VIII/20/192/05 Hqrs.Dbk. Unit dated 29.12.2006 and quash the same.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

For appellant :: Mr. Arvind P. Datar,Senior Counsel
for Mr. M. Balagopal

For respondents :: Mr. V.T. Gopalan
Addl. Solicitor General
assisted by
Mr. P. Wilson, Asst. Solicitor General

JUDGMENT

(DELIVERED BY P.JYOTHIMANI,J.)

The second respondent, Joint Commissioner of Central Excise, Pondicherry, has passed an order on 29.12.2006, that the Diffuser which has been fixed in the mosquito repellant machines manufactured by the petitioner is not eligible for availing drawback claim as per Section 75 of the Customs Act, 1962. It is seen that before passing the said impugned order, the 4th respondent, Assistant Commissioner of Customs (Drawback), has issued a notice dated 26.12.2006, captioned as "demand notice", in which, even though the 4th respondent has called for any representation from the petitioner, giving opportunity for personal hearing, it is stated in the said demand notice as follows:

> "(2) It was further informed that on re-examination of the fixation of the Brand rate with reference to definition of Drawback which specifies that imported/excisable material has to be used in the manufacture of exported goods whereas in this case the Mosquito Repellent Machine which was imported was exported as it is by the exporter. Therefore the drawback amount sanctioned in terms of Brand Rate letter becomes recoverable & the details of drawback sanctioned are as given below:
> ....."

2. The grievance of the petitioner is that they are the manufacturers of mosquito repellants and as far as the diffuser is concerned, it forms part of the entire mosquito repellant, and the same is imported and after fitting the same as machine it is marketed. As a complete set it is exhibited and therefore there was no question of separating diffuser for the purpose of denying the drawback claim as per the Customs and Central Excise Duties Drawback Rules, 1995.

3. The learned senior counsel Mr. Arvind P.Datar, would submit that in any event by the notice captioned as demand notice dated 26.12.2006, which preceded the impugned order, even though it is in the nature of show cause notice, the respondents have made up their mind before enquiry and without giving opportunity to the petitioner, especially in the circumstances that in the said notice the petitioner is permitted to make representation and also a personal hearing would be availed. He would also submit that the impugned order denies the claim of the petitioner under Section 75 of the Customs Act, even

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

before the petitioner could exercise its option to give representation and also appear for personal hearing, and it amounts to prejudging the issue. In these circumstances, he would contend that the order of the learned single Judge stating that by virtue of the notice dated 26.12.2006, the petitioner can always give explanation and the impugned order dated 29.12.2006 of the second respondent is only a piece of information, is not proper.

4. On the other hand, Mr. V.T. Gopalan, learned Additional Solicitor General would contend that inasmuch as the learned single Judge has held that notice dated 26.12.2006 is only a notice, it is always open to the petitioner to give explanation. However, he would fairly submit that the said notice dated 26.12.2006, which is captioned as demand notice ought to have been issued as a show cause notice and the expression given in the notice is only tentative in nature, and such expression will not be given effect to. As far as the impugned order dated 29.12.2006 is concerned, the learned Additional Solicitor General would submit that the learned single Judge himself while holding that the impugned order is only a piece of information, has held in paragraph 7 of the order that the impugned order dated 29.12.2006, need not be given effect to till order is passed in the proceedings initiated by means of the show cause notice dated 26.12.2006.

5. We have heard the learned senior counsel for the appellant as well as respondents and perused the records, including the order of the learned single judge.

6. Inasmuch as it is fairly conceded by the learned Additional Solicitor General that the notice dated 26.12.2006 should be treated only as a show cause notice, we make it clear that pursuant to the said show cause notice, the petitioner shall be entitled to submit explanation and also participate in the personal enquiry and it is for the 4th respondent to give adequate opportunity to the petitioner and pass appropriate orders in accordance with law.

7. Even though it is true that the learned Judge has directed that the impugned order dated 29.12.2006, is to be kept in abeyance till the proceedings initiated by the 4th respondent by notice dated 26.12.2006 is completed, we are of the view that the said order cannot stand the test of law, since it would amount to prejudging the issue. In view of the same, the writ appeal is disposed of confirming the order of the learned single Judge made in W.P.No.3735 of 2007 dated 12.02.2007, with the modification that,

> "(i) the notice issued by the 4th respondent dated 26.12.2006, under caption demand notice shall be treated as show cause notice to the petitioner and the petitioner shall be entitled to submit its detailed explanation within a period of two weeks from the date of receipt of a copy of the order and it is also open to the petitioner to avail personal hearing, in which event, the 4th respondent shall fix the date for

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

personal hearing and proceed with enquiry and pass orders in accordance with law;
(ii) the impugned order of the second respondent dated 29.12.2006, stands set aside.

The writ appeal is disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kh

To

1.The Commissioner of Central Excise
Goubert Avenue
Beach Road
Pondicherry 605 001.
2.The Joint Commissioner of Central Excise
Office of the Commissioner of Central Excise
Goubert Avenue
Beach Road
Pondicherry 605 001.
3.Deputy Commissioner of Central Excise
(Drawbacks) Office of the Commissioner of
Central Excise,
Goubert Avenue
Beach Road
Pondicherry 605 001.
4.Assistant Commissioner of Customs
(Drawback) Custom House
60 Rajaji Salai
Chennai 600 001.

WEB COPY

1 cc To Mr.P.Wilson, Assistant Solicitor General of India, SR.31561.

W.A.No.482 of 2007

TEJ(CO)
RVL 09.06.2007

https://hcservices.ecourts.gov.in/hcservices/